

Decision of the U. S. Court of Appeals

DECISION OF THE U. S. COURT OF APPEALS

(Filed September 16, 1965)

No. 15637

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

ELIZABETH ROSALIA WOODBY,

Petitioner,

v.

IMMIGRATION & NATURALIZATION SERVICE,

Respondent.

On Petition for Review of Denial of Motion to Reconsider

Decided September 16, 1965.

Before MILLER, O'SULLIVAN, and PHILLIPS, Circuit
Judges.

O'SULLIVAN, Circuit Judge. This case is before us upon the petition of Elizabeth Rosalia Woodby to review and vacate an order of the Board of Immigration Appeals entered on May 27, 1963, denying her Motion to Reconsider its earlier order of March 8, 1963. The March order dismissed her appeal from an order of a Special Inquiry Officer directing that she be deported to Germany. The deportation proceedings were had under 8 U.S.C.A. § 1251 (a) (12), which provides that,

"(a) Any alien in the United States . . . shall . . . be deported who—

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(12) by reason of any conduct, behavior or activity at any time after entry became a member of the classes specified in paragraph (12) of section of 1182(a) of this title;”

Section 1182(a) (12) defines as a class subject to exclusion,

“(12) aliens who are prostitutes or who have engaged in prostitution. . . .”

The special inquiry officer conducted a hearing pursuant to 8 U.S.C.A. § 1252, at which testimony was taken and petitioner was represented by counsel. Petitioner and three other witnesses testified at such hearing and affidavits of petitioner and another obtained upon prehearing investigation were received in evidence. The inquiry officer found that petitioner had engaged in prostitution as charged and ordered that she be deported. Petitioner concedes that she did engage in prostitution, but claims that she did so while acting under duress which arose from the circumstances hereinafter set forth.

On January 8, 1955, petitioner Woodby, a native of Hungary and a citizen of Germany, married an American soldier then in service in Germany. Two children were born of the marriage. The first, a girl, was born in Germany and the second, a boy, was born prematurely in the United States on August 13, 1956. Petitioner was admitted to the United States on February 7, 1956, and went to live with her husband and daughter at the home of her husband's parents in Harlan, Kentucky. A few months later petitioner and her husband moved to Dayton, Ohio, where the second child was born. Petitioner's infant daughter was then living with her paternal grandparents in Kentucky. It is clear from the evidence that petitioner's husband gave little attention to the support and care of his wife and children.

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Petitioner and her husband and the new born son lived for a time in Dayton until, as claimed by petitioner, the husband left her in early 1957, taking the son with him, and presumably took up residence in Harlan, Kentucky, with his parents and children. The husband was killed in an automobile accident about July 14, 1957.

It was after her husband left her that petitioner entered into the practice of prostitution. Her account of the facts which she claims made such conduct the product of duress is as follows:

While working to support herself, and about April 1, 1957, (later changed to February 7, 1957), she got a telephone call from her husband, who told her that their infant son was seriously ill and needed an operation that would cost \$300.00. He stated that he had no money or Blue Cross insurance and requested her to provide the needed cash. The next day while petitioner was alone in her apartment contemplating her plight and crying, fearful that her son would die unless she could get the money for his operation, a vacuum cleaner salesman came to her apartment. Observing petitioner's apparent state of anxiety, this man asked the cause and told her he could help her get the money. He left momentarily and shortly returned with another man and a bottle of whiskey. After petitioner had consumed some whiskey, this vacuum cleaner salesman and part-time panderer proposed that he would lend petitioner the needed money to be repaid with her earnings as a prostitute from customers he would procure. She was importuned to disrobe and have some pictures taken in the nude, presumably to aid the procurer to attract business to her. Petitioner thereupon began the regular practice of prostitution, carrying it on in addition to her employment as a waitress. She continued in this enterprise until she had earned enough to and did repay the loan.

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She testified that she ceased her life as a prostitute about July 1, 1957, (later changed to early April, 1957), and went to Tennessee, later to return to Dayton with a woman friend. She stated that she did not thereafter engage in prostitution, although she admitted to continuing sexual relations with a man whose first meeting with her was to keep a prostitution engagement.

A very confused record ends its identification of petitioner's activities with the latter part of the year 1958. What occurred between then and the immigration authorities' investigation of her in about the middle of 1961 is not revealed. The record suggests some effort on petitioner's part to regain custody of her children from her husband's parents, but the record is silent as to the outcome. The record is likewise silent as to how and why the immigration authorities became interested in petitioner at least three years after, as far as the record before us discloses, she discontinued activities as a prostitute. We have been told nothing as to the legal custody of petitioner's children, except for the observation in the decision of the Special Inquiry Officer that "since her citizen children are now in the legal custody of respondent (*sic*) father- and mother-in-law, there is no basis for considering that her deportation would result in extreme hardship to her children." The appendices before us give no advice as to the basis for such observation nor whether the grandparents in any way excited the government's interest in deporting petitioner. The Special Inquiry Officer further said that while at the time of the hearing in 1962 petitioner's children had been with the grandparents for two years, "there is no indication that respondent has the received custody of the children, although at the hearing she testified she had engaged a lawyer for proceedings to regain their custody."

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The order of deportation provides that petitioner, the mother of these infant American citizens, "be deported . . . to Germany" and that if Germany will not accept her, "the respondent shall be deported to Hungary."

The evidence which has brought about her deportation was principally supplied by information disclosed to the authorities by petitioner herself, together with that of three obviously friendly witnesses called at the hearing before the Special Inquiry Officer. This officer's conclusions were based on this testimony and sworn statements earlier taken from petitioner and a gentleman friend of hers. This man testified that while his first meeting with petitioner in October, 1957, was to enjoy her availability as a prostitute, he fell in love with her and would like to marry her if he could obtain a divorce from his wife. We assume that, for whatever reason, this marriage has not yet taken place, although petitioner admits having sexual relations with this man after she had discontinued her prostitution until a time shortly before the hearing.

The decision of the Special Inquiry Officer and the affirmance of that decision by the Board of Immigration Appeals were not based upon a conclusion that petitioner's story of entering prostitution under the duress of having to raise \$300.00 to save the life of her son was false. They referred to it as a "bizarre story" and "a hard story to believe." But they concluded that whatever the circumstances that prompted its beginning, she continued to carry on the business of prostitution after the original compulsions had ceased to operate. The Board of Immigration Appeals stated,

"Even if the respondent's story is to be believed, and even if it be conceded that the circumstances under which she entered the practice of prostitution may have amounted to duress, nevertheless the con-

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tinuance of the practice of prostitution until at least late 1957 is not explained and cannot be defended on the ground of duress."

It is quite apparent that the Board and the Special Inquiry Officer arrived at their factual conclusion from the many discrepancies in petitioner's testimony and its contradiction by statements made by her in her prehearing sworn statement. There was much confusion as to the places at which and the times during which she carried on as a prostitute. Such confusion would permit a finding that her activity in this regard extended into late 1957 and possibly late 1958, and that she was freed of the claimed duress in early 1957. There is no evidence of prostitution by her after 1958 and in her address to this court she implied that she has been leading an exemplary life since the latest date that the proofs established prostitution. She testified at the hearing that she has not returned to prostitution, and the three other witnesses testified to her good character and reputation. We are not informed as to the custodial status of her children from and after the proven period of her prostitution. Her hearing was held March 28, 1962, the Special Inquiry Officer's decision was rendered October 30, 1962, her appeal to the Board of Immigration Appeals was dismissed March 8, 1963, and her Motion to Reconsider was denied on May 27, 1963. The Motion to Reconsider, verified by her oath, did not rely upon a claim of her children's need for her. Further evidence of her continued good behavior or her children's need for her might move the immigration authorities to withhold the seeming cruelty of tearing a young mother from her children and sending her from the country of which they are citizens. Even if it were our function to appraise the harshness of the deportation of this petitioner, we do not

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have sufficient facts before us upon which to form our own judgment thereon. We believe that our function ends when we find, as we do, that the Board's underlying order is "supported by reasonable, substantial, and probative evidence on the record considered as a whole . . ." 8 U.S.C.A. § 1105(a)(4), and that denial of petitioner's Motion to Reconsider was not an abuse of discretion. The Board made out its case and it is not for us to say that petitioner's post-prostitution good conduct, if such had been proved, required forgiveness and the withholding of deportation. We are not at liberty here to proceed on the basis of what we might have done had we been in the position of the immigration authorities.

Giova v. Rosenberg, . . . U.S. . . . (1964) held that denial of a Motion to Reopen is a final order, reviewable by this Court even though such review is sought more than six months from the order of deportation, but within six months of denial of a motion to reopen. The respondent Immigration and Naturalization Service contends that inasmuch as the petition for review here was filed more than six months from the date of the order of March 8, 1963, affirming the order of deportation, we are limited to reviewing the discretionary denial of the Motion to Reconsider. See 8 U.S.C.A. § 1105a(a)(1).

Petitioner contends that her Petition for Review requires that we test the Board's action under 8 U.S.C.A. § 1105a(a)(4) which seemingly permits us to consider whether the underlying order was supported by "reasonable, substantial, and probative evidence on the record considered as a whole." We need not decide this suggested limitation upon our review powers because, as stated above, we are persuaded that the Board orders must be affirmed on either ground.

It is so ordered.

*Appendix***APPENDIX****UNITED STATES DEPARTMENT OF JUSTICE****Immigration and Naturalization Service****Oct. 30, 1962****File: A10 331 472—Cleveland, Ohio**

In The Matter Of
**ELIZABETH ROSALIA
 WOODY**

Respondent

**IN DEPORTATION
 PROCEEDINGS**

CHARGE:

**I & N Act—Section 241 (a) (12), prostitution after
 entry [8 U.S.C. 1251 (a) (12)]**

APPLICATION: Termination of proceedings

**In Behalf of
 Respondent:**

**Sidney G. Kusworm, Sr.,
 Esquire**

**Jacob A. Myers, Esquire
 403 Keith Building
 Dayton, Ohio**

**In Behalf of
 Service:**

**W. Nelson Brown
 Examining Officer
 Cincinnati, Ohio**

DECISION OF THE SPECIAL INQUIRY OFFICER

**Respondent is a female, 30 years old, a widow and the
 mother of two United States citizen children who at the
 time of the hearing were in the legal custody of her father-**

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and mother-in-law. She is an alien, a native of Hungary and a citizen of Germany, whose only entry into the United States was on or about February 7, 1956, at New York, New York.

The order to show cause contains the allegation, "You have engaged in prostitution after entry," and charges her with deportability pursuant to section 241(a)(12) of the Immigration and Nationality Act [8 U.S.C. 1251(a)(12)], in that by reason of conduct, behavior or activity at any time after entry she became a member of any of the classes specified in section 212(a)(12), to wit, aliens who have engaged in prostitution.

Respondent admits she engaged in prostitution after entry, but claims it was in circumstances of economic and emotional duress occasioned by news that her infant son needed hospitalization which would cost \$300, a sum which a procurer, a stranger to her, agreed to advance to her to be repaid from money she would receive from men he would send to her.

The respondent came to Germany from Hungary in 1945 as a displaced person. On January 8, 1955, she married a United States citizen serving in the United States armed forces in Germany. Their first child, a girl, was born in Germany. After respondent's arrival in the United States in February in 1956 she and her husband and daughter lived with her husband's parents in Harlan, Kentucky, for a few months, then came to Dayton, Ohio, where her son was born on August 13, 1956. As prematurely born, the infant remained in the hospital for three or four months. Respondent testifies that when the baby was released from the hospital, she and her husband quarreled and her husband virtually forced her to visit a friend in Pennsylvania. She returned after one day to find that her husband had

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taken the baby and left for Harlan, where her daughter already was. This would have been in late 1956.

About four months later, according to respondent, she had a telephone call from her husband telling her that the baby had to be hospitalized and that \$300 was needed at once and that she was the only one in the family who could raise that sum. The next evening, so her story goes, she was alone in her apartment, crying, when a vacuum cleaner salesman called. She told him of her troubles and that since she had just taken a job as a waitress she knew no one from whom she could borrow the money. The salesman said he might be able to help her. He left the apartment and soon returned with a bottle of whiskey and another man. After a few drinks around the salesman offered to advance the money, to be repaid, as aforesaid, from what she received from men he would send to her. As a waitress she was free afternoons to accept dates. Respondent agreeing, the salesman and the man with him then took some photographs of respondent in the nude, she had the \$300 the next day and received her first customers. Respondent testifies she continued receiving men in prostitution for about eight weeks until she was able to repay the salesman. She then wanted to quit but the salesman threatened to report her to the police or the immigration authorities, and she did continue for another two weeks after these threats, and then she met Mr. Amicon and quit prostitution (H. R. 13, Ex. 2, p. 16).

The only precedent decision of the Board of Immigration Appeals involving prostitution committed under duress is *Matter of M—*, 7 I. & N. Dec. 251 (1956). The alien there was a girl of 17, an orphan, whom two women transported from one Mexican city to another on promises of employment as a waitress at higher wages. Instead she was forced

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into a house of prostitution and told that she would have to remain until her transportation costs of a thousand pesos were repaid. On several occasions she attempted unsuccessfully to escape. The Board stated as follows: "As a matter of law she is not excludable as a prostitute under section 212 (a) (12) of the Immigration and Nationality Act of 1952, because those to whom respondent was indebted reduced her to such a state of mind that she was actually prevented from exercising her free will through the use of wrongful, oppressive threats or unlawful means [footnote omitted]."

No threats or unlawful means accompanied the salesman's proposition to Mrs. Woodby. If her story is believed, anxiety for her child made the proposition acceptable and she voluntarily accepted it, though in less pressing circumstances she would have rejected it. If it is argued that the salesman used liquor to influence respondent's initial decision, there was opportunity the following day to repent and reject the proposal.

If as a matter of law the story she tells should make the defense of duress available, a careful study of the record discredits that story. The chronology of events is decisive. The first clear date is August 13, 1956, when her son was born. About four months later the son was released from the hospital and her husband left her, taking the infant with him. This would have been about December, 1956. The son's later need for hospitalization came when he was six to eight months old, and when respondent was living in Summit Court, Dayton (Ex. 2, p. 10). At the latest, this would have been April, 1957, when respondent admittedly began practicing prostitution. The date is further fixed by respondent's testimony that after her husband left her she found a job at McCrory's, which she held for three

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months before commencing at Neil's Restaurant. It was shortly after she started work at Neil's that she received the telephone call about her son (H. R. 29).

As before indicated, it was when she met Mr. Amicon that she quit postitition. At the hearing, Mr. Amicon testified he met respondent around October, 1957 (H. R. 18). If Mr. Amicon correctly fixed the month and year, respondent had by then been prostituting since April, or about six months, rather than the approximate two months she admits to in which she raised the \$300 to repay the vacuum cleaner salesman. From the record, however, it appears that the year in which she met Amicon was 1958 rather than 1957. Amicon testified that when he first met respondent she was living at 1500 Riverview in an apartment above Neil's (Ex. 3, p. 3). From respondent's testimony and that of her witness, Mrs. Jackson, it develops that respondent did not move to the apartment at 1500 Riverview above Neil's until late 1958. When respondent left Summit Court she went to Knoxville, Tennessee, where she stayed three months (H. R. 33, 34). She had moved to Summit Court about two months after her husband left her, or about February of 1957 and resided there about a year or longer, or until February, 1958, or later (Ex. 2, pp. 3, 4). She left Summit Court when its management learned, according to respondent, that one of the vacuum cleaner salesman's girls, who was sharing respondent's residence there, was practicing prostitution, and told her to leave (Ex. 2, p. 21). Respondent returned from Knoxville on July 4, 1958, when her friend Mrs. Jackson came from Dayton to get her. She then shared an apartment on Rugby Road until September, 1958, when they moved to 1500 West Riverview, the apartment over Neil's Restaurant (H. R. 40). This was the apartment to which she took Mr. Amicon when she was introduced to him as a prostitute.

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Respondent and Mrs. Jackson lived together until about February, 1961, or a period of about two and a half years, according to the testimony of respondent's witness, Mrs. Jackson (H. R. 40). These dates, supplied variously by respondent, Mrs. Jackson and Mr. Amicon and mutually corroborated in one detail or another, demonstrate that respondent commenced practicing prostitution about February of 1957, whatever the reason or provocation may have been, and continued until late 1958, long after she had repaid the salesman's loan, if her story about the loan be believed. Parenthetically, it is a hard story to believe.

I find the fourth allegation of the order to show cause sustained by the respondent's testimony, that of her witness Mrs. Jackson, and that of the man who testified that he hoped to marry her. There are other indications in the record that respondent may have been engaged in prostitution before the time she admits she did and after the time she claims to have stopped. They are corroborative, but need not be detailed.

The respondent, through counsel, has made application only for termination of proceedings. On the record of this proceeding and the charged ground of deportation, the only eligibility for relief from deportation would be an application for adjustment of status under section 245 of the Act [8 U.S.C. 1255] and waiver of inadmissibility under section 212(g) [8 U.S.C. 1182(g)]. Since her citizen children are now in the legal custody of respondent father-and mother-in-law, there is no basis for considering that her deportation would result in extreme hardship to her children. The custody of the grandparents was at the time of hearing of two years' duration. At the present writing there is no indication that respondent has received the custody of the children, although at the hearing she had engaged a lawyer for proceedings to regain their custody.

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Respondent has designated Germany as the country of her deportation. Should Germany not accept her, the special inquiry officer specifies Hungary as the country of deportation, that being the country of her birth.

ORDER: IT IS ORDERED that the respondent be deported from the United States to Germany on the charge contained in the Order to Show Cause.

IT IS FURTHER ORDERED that if the aforementioned country advises the Attorney General that it is unwilling to accept the respondent into its territory or fails to advise the Attorney General within three months following original inquiry whether it will or will not accept the respondent into its territory, the respondent shall be deported to Hungary.

/s/ RICHARD P. LOTT
RICHARD P. LOTT
Special Inquiry Officer

Appeal

UNITED STATES DEPARTMENT OF JUSTICE

Board of Immigration Appeals

(Filed March 8, 1963)

File: A-10331472-Cleveland

In re: ELIZABETH ROSALIA WOODBY

IN DEPORTATION PROCEEDINGS

APPEAL

ORAL ARGUMENT: January 21, 1963

On behalf of respondent: SIDNEY G. KUSWORM, ESQ.
403 Keith Building
Dayton 2, Ohio
(Did not appear submitted
case on brief)

On behalf of I&N Service: Irving A. Appleman, Esq.

CHARGES:

Order: Sec. 241(a)(12), I&N Act (8 USC 1251 (a)
(12))—Prostitution after entry

Lodged: None

APPLICATION: Termination of proceedings

The case comes forward on appeal from the order of the special inquiry officer dated October 30, 1962, finding the respondent deportable on the charge stated above and directing her deportation to Germany or, in the alternative, to Hungary.

The respondent is a native of Hungary, a citizen of Germany, 30 years old, female, whose last and only entry into the United States occurred on or about February 7, 1956, at the port of New York. She had married a United States citizen serving in the United States Armed Forces in Germany on January 8, 1955, and a daughter was born to

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them in Germany. The respondent and her daughter lived with her husband's parents in Harlan, Kentucky, for a few months and then came to Dayton, Ohio, where a son was born on August 13, 1956. This was a premature birth and, as a consequence thereof, the baby remained in the hospital for several months. The respondent testified that when the baby was released from the hospital she and her husband quarreled and her husband virtually forced her to visit a friend in Pennsylvania; that she returned after one day to find that her husband had taken the baby and left for Harlan where her daughter already was. This would have been about December 1956.

When the son was about six to eight months old, the respondent testified she received a phone call from her husband telling her that the baby son required hospitalization and that \$300 was needed at once. The next evening she was alone in her apartment, crying, when a vacuum cleaner salesman called, to whom she told her troubles. After a few drinks the salesman offered to advance her the money to be repaid from what she received from men he would send to her. Compelled by circumstances, the respondent agreed; a man with the salesman took some photographs of her in the nude. She received the \$300 which she sent to her husband and continued the practice of prostitution for about eight weeks from April 1st 1957 until she was able to repay the salesman. She then wanted to quit but the salesman threatened to report her to the police or immigration authorities and she continued for another two weeks but when she met a Mr. Amicon she quit prostitution.

In her statement dated November 20, 1961 (Ex. 2) the respondent at first testified that she engaged in illicit sex acts but maintained that she only received gifts for such occasional acts, that she did not solicit men in such acts and that she had sexual relations with only three men since

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her marriage. She further testified that about six or eight months after her son was born her husband asked her for money to pay for the son's hospitalization and that she borrowed \$300 from a vacuum cleaner salesman named Tom Wally but that she received only \$40 or \$50 from illicit sexual relations. She stated that her employer took the \$300 out of her pay. After being admonished to tell the truth, she then stated that Mr. Wally, who had called on her to demonstrate a vacuum cleaner, and to whom she told the story of needing \$300, agreed to give her \$300 if she would practice prostitution and that she agreed although she did not realize it was prostitution and that men paid her \$5 or \$10; that after she had the \$300 she sent it to her husband and as far as she knows the boy had the operation and is all right. In her statement she testified that she indulged in this practice for about two months, the first time in Summit Court and that she received two men a day for three or four days a week and that all these acts occurred at the Summit Street address.

According to the respondent's story she practiced prostitution from about April to June 1957. Mr. Amicon, in his statement of November 15, 1961 (Ex. 3) stated that he first visited the respondent for the purpose of sexual intercourse about the first of December 1957 when the respondent was living at 1500 West Riverview, that he could not go through with it but left her the money anyway. He stated he then went back with his wife for Christmas and resumed a sexual relationship with the respondent about February 1958 but he did not pay for it and that sex turned into love. This witness admitted making a statement to the police acknowledging that he had paid the respondent for prostitution but he said he did so to prevent the officers from taking the respondent's child to a children's home. Mr. Amicon stated that he did not know of any other persons

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with whom she engaged in acts of prostitution and did not know that she was a prostitute other than those times when he paid her for such acts (Ex. 3, p. 7). He also confirmed respondent's story to the extent that she had told him that her little boy needed an operation in the amount of \$300 and that a vacuum cleaner salesman, to whom she had told her troubles, arranged for her to practice prostitution to raise the money.

Mr. Amicon appeared as a witness at the hearing and testified that he met the respondent about October 1957, and that he was told by a friend that she practiced prostitution, that he visited her for that purpose but did not have sexual relations at that time although he left her \$10. The witness corrected his statement of November 15, 1961, to the effect that he did not pay the respondent for acts of prostitution.

The respondent stated that she resided at Summit Court, Dayton, Ohio, about two months after her husband left her in December 1956, or that February 1957, and resided there about a year and a half (Ex. 2, pp. 3-4). She testified that she stayed at Knoxville, Tennessee, for three months and returned on July 4, 1957, or 1958 when Mrs. Jackson picked her up. (Tr. pp. 34-35); that she lived with Mrs. Jackson for two weeks on Rugby and then they moved to an apartment at 1500 Riverview above Neil's where she was working. She further testified that she lived with Mrs. Jackson about a year.

Mrs. Arlene Jackson appeared as a witness for the respondent and testified that the respondent called her from Knoxville, Tennessee, to pick her up and that she returned to 1936 Rugby Road, Dayton, Ohio, on July 4th; that they moved in September to 1500 West Riverview above Neil's where they lived until between Christmas and New Year's, 1958. She stated that the respondent lived with her until about February 1961, a total period of two and a half years.

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It is noted that the respondent had first denied the practice of prostitution, stating that she engaged in illicit intercourse for gifts only three months; and then later changed her story to the effect that she engaged in prostitution as a result of an urgent request from her husband, from whom she was separated, for \$300 to pay for hospitalization for their son; that she entered into prostitution as a result of an arrangement with a vacuum cleaner salesman and that she practiced prostitution from April 1957 for eight to ten weeks or until June or July 1957. A witness, Mr. Amicon, has testified variously that he met the respondent in October or December 1957 at 1500 West Riverview above Neil's when he was referred to her as a practicing prostitute. A witness for the respondent, Mrs. Jackson, has testified that the respondent moved with her to 1500 West Riverview above Neil's in September 1957 and remained there until 1958. They continued living there until Christmas or New Year's of 1958. The testimony of these witnesses makes it apparent that the respondent was engaged in the practice of prostitution until about October or December 1957 and not, as she claimed, until June or July 1957.

Even if respondent's bizarre story that she engaged in prostitution to raise \$300 for her son's operation is accepted, it is clear from the evidence that she continued to practice prostitution until at least late 1957 or 1958, long after she had repaid the loan from the vacuum cleaner salesman. While it is not clear from the testimony whether it was 1957 or 1958, taking the evidence most favorable to the respondent it was at least late 1957. Even if the respondent's story is to be believed, and even if it be conceded that the circumstances under which she entered the practice of prostitution may have amounted to duress, nevertheless the continuance of the practice of prostitution until at least

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late 1957 is not explained and cannot be defended on the ground of duress. Upon a full consideration of all the evidence of record, it is concluded that the evidence establishes deportability on the charge contained in the Order to Show Cause. The appeal will be dismissed.

ORDER: It is ordered that the appeal be and the same is hereby dismissed.

/s/ THOS. G. FINNSANE

Chairman

Motion

UNITED STATES DEPARTMENT OF JUSTICE

Board of Immigration Appeals

(Filed May 27, 1963)

File: A-10331472-Cleveland

IN DEPORTATION PROCEEDINGS

MOTION

On Behalf of Respondent: SIDNEY G. KUSWORM, Esquire
Kusworm and Kusworm
403 Keith Building
Dayton 2, Ohio

CHARGES:

Order: Sec. 241(a)(12), I&N Act (8 USC 1251 (a)
12))—Prostitution after entry

Lodged: None

APPLICATION: Motion to reconsider

Respondent, whose deportation is set for May 28, 1963, moves for reconsideration of the Board's order of March 8, 1963 requiring her deportation upon the ground stated above; oral argument is requested. The request for oral argument and the motion will be denied.

Respondent, a 30-year-old female, a native of Hungary and citizen of Germany, was admitted to the United States on February 7, 1956. She was charged with having practiced prostitution after entry. The deportation proceedings reveal that respondent admitted having practiced prostitution but stated that it was under the duress of raising money to pay for an operation. The special inquiry officer and the Board found that assuming duress had been present

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at all, respondent had nevertheless continued to engage in prostitution after the duress had been removed.

The motion gives no reason for the reconsideration but has attached to it an affidavit from the respondent and one from Anthony Amicon. Respondent states that she had engaged in prostitution for two months (February 1957 to about April 1957) to earn money to pay for an operation and sets out her whereabouts from February 1957 to October 1957. Mr. Amicon who had been a witness at the hearing stated that he met the respondent in October 1957 and to the best of his knowledge she had never engaged in acts of prostitution as long as he had known her.

The material furnished was called to the Board's attention by counsel's brief and reply brief. It was carefully considered by the Board before its order was made. We find no reason to change our previous order.

We note the motion for reconsideration is defective for failure to comply with the regulation (8 CFR 103.5) which requires that the reason upon which the motion is based shall be stated and that information as to whether the validity of the order of deportation has been the subject of judicial proceedings shall be furnished.

The case was thoroughly briefed by counsel and we find no reason advanced to hear oral argument on the motion.

ORDER: It is ordered that the application for oral argument on the motion for reconsideration be and the same is hereby denied.

IT IS FURTHER ORDERED that the motion for reconsideration be and the same is hereby denied.

/s/ THOMAS J. GRIFFIN

Acting Chairman

Mrs. Woodby

(H. R. 15)

* * * * *

(Mrs. Woodby)

Q. When did you leave Summit Court? A. About five years.

Q. And did you leave Summit Court shortly after you ceased having these relations? A. Yes.

Q. And you stated earlier I believe that Mr. Wally threatened you and was reporting you . . . A. Correct.

Q. . . . to these other authorities. I note in your statement here on Page 15 of Exhibit 2, these questions, two questions that I'd like for you to explain, if you will please. Question: "Did Mr. Wally attempt to get you to continue this arrangement after that time?" "Yes." "Did he threaten you in any way?" The answer is, "Not direct." "In what way did he threaten you?" Answer: "First he said he would report me." Question: "To whom did he threaten to report you to?" Answer: "I guess the police." Is that correct? A. To the immigration men. He knew that I wasn't an American citizen.

Q. When you first met him, you have indicated that he took pictures of you. A. Yes, that's correct.

Q. Were these pictures that if they were shown to somebody else would cause you embarrassment? A. I think so.

Q. Were they pictures that were posed without clothing?

(H. R. 18)

* * * * *

(Mr. Amicon)

By Mr. Brown:

Q. Mr. Amicon, when did you meet Mrs. Woodby, approximately when? A. 1957, approximately I think around October.

Mr. Amicon

Q. You stated in this statement that you met her at the place where she works, Neil's Restaurant. A. Yes, sir.

Q. Furthermore, that she was employed there as a waitress, is that correct? A. Yes, sir.

Q. It is noted that you stated that the manner in which you met her was you went there with a friend to eat and the friend knew her and told you about

(H. R. 20)

* * * * *

have sexual relations at that time? A. No, sir, I did not?

Transcriber's Note: Two questions and answers here are unintelligible.

Q. And what is your relationship with her now? A. We're on very good terms.

Q. What? A. On very good terms. I would like to marry this girl if I can get my divorce.

Q. Do you plan to marry her if you get a divorce? A. I've given her a ring.

* * * * *

(H. R. 25)

(Mrs. Woodby)

Q. Did you and your husband and the child have one of the bedrooms? A. Yes.

Q. Was your husband working during that period of time? A. No, sir.

Q. How long did you live in Harlan, Kentucky after you arrived? A. Six or seven months.

Q. And your husband never worked during that time? A. No.

Q. Did he suggest that you leave Harlan, Kentucky, and go someplace else where you could find work? A. No, he did not. I suggested it to him.

Mrs. Woodby

Q. You suggested it? A. Yes, I was expecting my second child.

Q. At that time. When did you deliver your second child?

A. The 13th of August.

Q. What year? Well, you arrived in New York in 1956.

A. The same year.

Q. The same year? In August of 1956 you gave birth to what child? A. Leonard Clarence.

Q. Now, at what time were you still living in Harlan, Kentucky? A. No, because we had been here living with my other sister-in-law.

Q. With your husband's sister? A. Yes.

Q. How long had you been living in Dayton, Ohio, at that time? A. We was moving in an apartment a month before the child was born.

Q. Well, how long had you been in Dayton?

(H. R. 26)

A. We moved from one sister to another sister-in-law.
By Mr. Kusworm:

Q. A short time? A. A short time.

By Mr. Myers:

Q. All right. Now, when you lived with your sister-in-law at Fairborn, was your husband looking for a job?

A. Yes, he was.

Q. Did he ever find a job? A. No, he did not.

Q. And approximately how long did you live with that sister-in-law? A. Through the childbirth it was.

Q. And then you moved into an apartment? A. Yes.

Q. And where was that apartment? A. 528 Notre Dame.

Q. Now, when you were at 528 Notre Dame, was your husband still looking for a job? A. He just find a job before. I get him the job.

Mrs. Woodby

Q. You got him the job? A. Yes. I had to go to the doctor and my sister was taking me to a German doctor. I could not speak English good and I was taken to the German doctor, and I told him my problem and when I come over here and he says he could get a job for my husband.

Q. I see. Now, how long did you live at 528 Notre Dame?
A. About four months.

(H. R. 27)

Q. Four months? And then why did you leave there?
A. I left. As soon as the child was born, the second, my husband took my little girl to Kentucky. When I come out of the hospital I didn't have no job there and the son was injured and still in the hospital, too. At that time my husband worked in a filling station, but he come home about some three or four o'clock in the morning. I didn't know where he was or what he was doing until he gets a registered letter and I asked him for this letter because I decided that I wanted to see it. And he didn't show me the letter, burned it. I don't know where the letter come from. Anyway, we get an argument and I wanted to leave him and the little boy was just come out of the hospital and he said to me, "If you travel, you'll travel without the child." I didn't want to get in any trouble because of me not being a citizen. I'd better let the child go. So, I did. He give me ten dollars and he put me on the bus to go to Pennsylvania to my girl friend what I know from Germany. I went down there, but I returned the next day. The day I come back the child was gone and the apartment was empty. I didn't have no money.

Q. What did you do then? A. I meet a girl.

Q. Then your husband forced you onto the bus almost at gun point? A. Yes, he give me ten dollars and put me on the bus.

Q. And put you on the bus with ten dollars and sent you

Mrs. Woodby

to Pennsylvania to your girl friend's house. And when you got to Pennsylvania you wanted to come back to your little child? A. Yes.

Q. Did you have any money so you could come back?

(H. R. 28)

A. My girl friend gives me the money to come back.

Q. She gave you bus money to come back? A. Yes.

Q. And you came back to Dayton, Ohio, the next day?

A. That's right.

Q. And you went to your apartment on Notre Dame?

A. Yes.

Q. And your husband was gone? A. Yes, and the children.

Q. Both children were gone, too? A. The first child was in Kentucky already. (unintelligible sentence)

Q. I see. Your daughter was in Kentucky when you went to the hospital, and you didn't have anybody to stay with the child. A. That's right.

Q. I see. So you came back to the apartment and he was gone, your child was gone, and everything else was gone. A. I come back from Pennsylvania because the baby was sick with the flu.

Q. Were you sick at that time? A. Yes, I was sick, too.

Q. What was wrong with you? A. I guess it was the aftereffects. I was going back to working and keeping house and everything and I wasn't feeling good. Then the boy was sick and I couldn't take him on the bus. I went to Pennsylvania, but I returned the next day because I know the boy wasn't well, but he was gone, his clothes and everything wasn't there.

Q. Well, where did you live then, when you came back to the apartment?

Mrs. Woodby

(H. R. 29)

A. I stayed in an apartment until I find a job.

Q. Where, in the same apartment on Notre Dame?

A. Yes.

Q. This was a furnished apartment then? A. Yes.

Q. And where did you find a job? A. At McCrory's, the five and ten cent store down town.

Q. All right. How long did you work in McCrory's? A. Three months.

Q. And then where did you go? A. Then I find a job where I am still working now.

Q. At Neil's? A. Neil's Restaurant.

Q. Now, what happened this one day when you received a phone call from your husband? This happened right after you went to work for Neil's? A. Yes.

Q. All right. And you were living on Orchard? A. No, I was living on—this time I had a phone call from my husband I was living at Summit Court. Right behind the place I'm working.

Q. I see and you received a phone call from your husband and what did your husband say? A. He called me and he told me that the boy gets in the hospital and that he don't have any insurance or Blue Cross to pay the hospitalization and the boy needs operation and they won't do it if he's not paying for it and he did not work as I told you and he asked me to send him the money. I asked him how much he needed. And he said \$300. And I told him I don't

(H. R. 30)

have the money and I had not been too good to anybody to ask them for the money. And I just a short time work for my employer and of course (coughing here), but within this time before I got this call I had found a job at McCrory's, I went down to Kentucky. . . .

Mrs. Woodby

By Mr. Kusworm:

Talk to the judge so he can—he wants to hear you.

By Respondent:

A. . . . and brought my little girl with me back to Dayton. She wasn't living with me at the time, see, my husband called me and told me that he needs the money for this operation.

By Mr. Myers:

Q. Did he tell you what kind of an operation the child needed? A. No, he did not.

Q. Did he say it was a serious operation? A. He said it was serious, something about a head injury or something.

Q. So you were put in fear. . . . A. Yes..

Q. . . . at the time, that the child needed an operation and you didn't have any money for the operation. Did you fear that the child might die if he didn't have an operation? A. Yes, I did because I know if I don't help, my husband don't do it because he doesn't have a job and my in-laws don't have money to pay for it.

Q. So you knew that if you didn't get the money for this child there would be no way that the child could get an operation and therefore it might die? A. That's correct.

(H. R. 31)

Q. And this, at that time, was your sole worry, how to get this money to your child?

The Special Inquiry Officer:

Mr. Myers, these questions are tremendously leading. I'd like to hear her story in her own words, rather than yours.

Mr. Myers:

All right. Excuse me. I'm getting carried away because I've gone over it so much, your honor.

Mrs. Woodby

By Mr. Myers:

Q. All right, let me go back then, Mrs. Woodby. What was your feeling when you received the phone call from your husband? You already stated that you knew your husband didn't have any money and he wasn't working and you already stated that your in-laws didn't have any money. Now, tell the court what your feeling was, this is very important.

A. I was working part time, I was working from nine o'clock to 1:30 in the afternoon and then went back to work at five till 2:30 in the morning, and I had my little girl with me as I told you. Yeah, I did get a phone call from my husband and he told me that the boy's very sick and that he needs operation, but he can't pay for it, he didn't have no insurance and if I'm a mother now, to get it. And I told him, "I don't have that much to give you." He says, "If you are mother enough, you know how to get it, if you care enough for the child." I told him I'd try.

By Special inquiry Officer:

Q. Let me interrupt you. You said, if you are mother enough you would know how to get the money? A. Yes. It was on the next day (unintelligible).

(H. R. 32)

By Mr. Myers:

Q. What was your feeling—I mean, what did you feel if you didn't get the money, about your child? A. I would have done anything for this child..

Q. Did you feel that the child might die? A. Yes, because as I told you I knew he wasn't very well.

Q. All right. Now, that was one day. When did Tom Wally come into the picture? A. It was right the next

Mrs. Woodby

day after I talked to my husband on the phone the day before.

Q. All right, and then what happened? A. Mr. Wally come to the door and knocked on the door and I opened it. I was crying and he said to me then, "I would like to demonstrate a sweeper," and I told him, I said, "Look, in the first place I could not afford a sweeper and in the second place I have other things on my mind to do much more than buying a sweeper." And he told me, "What are you troubled about?" And I guess—I told you I was alone. He was a stranger, but some times you have to talk to somebody, so I told him. He told me, he says, "How fast do you need the money?" I said, "I need it in a couple of days." He says, "Well," he says, "I'll be right back, then we can talk about it much better." He went outside and come in with a fifth.

By Mr. Kusworm:

Q. A what? A. A bottle.

Q. Of what? A. Of whiskey. I was not drinking at this time and it hit me pretty fast.

(H. R. 33)

By Special Inquiry Officer:

Q. You said it hit you pretty fast? A. The drink. So he told me how I could make the money, how he's going to help me and he's going to give me \$300 now if I work for him. I did not want to do it, but I was thinking about the child I had nicknamed and the child's in the hospital, so I did it. He says, "I put you on," he says, "three months." But I was not planning on it and I did not do it for a living because I work all my life, but I needed that money at that time. As fast as I get it I quit and I told him so.

By Mr. Myers:

Q. Mrs. Woodby, did you work until you got the \$300, is

Mrs. Woodby

that right? A. That's right. Until I paid him the \$300 what he give me.

Q. You paid him back his \$300 and so soon as you paid him back that \$300 did you quit? A. Yes.

Q. Mrs. Woodby, to continue now, you stated that you paid Tom Wally back the \$300. Now, when you paid him back did you stop all that prostitution? A. Yes, I did.

Q. And how long ago was that? A. Four or five years.

Q. Did Mr. Wally approach you after that time to perform other acts for him? A. Yes, he tried.

Q. And what was your answer to him? A. No.

Q. Now, since that time, which you said was approximately four or five years ago, you were living at that time on Summit?

(H. R. 34)

A. Yes.

Q. Now, did you move at that time or approximately at that time? A. Yes, I went down to Knoxville, Kentucky.

Q. Knoxville, Kentucky, or Tennessee? A. Tennessee.

Q. All right. And how long did you stay at Knoxville, Tennessee? A. Three months.

Q. And what were you doing there? A. I was working in the dining room as a waitress in the Brown Derby.

Q. Is that a restaurant? A. Yes.

Q. Do they serve liquor there? A. No, just beer. It's dry.

Q. Now, did you ever engage in any acts of prostitution while living at Knoxville, Tennessee? A. No, I did not.

Q. When you decided not to stay at Knoxville, Tennessee, any more, how did you come back to Dayton? A. Mrs. Jackson. I called her to come down and pick me up. She come down and picked me up.

Mrs. Woodby

Q. And what is her first name? A. Arlene.

Q. Now, approximately what was the date of this that she came to pick you up? A. It was the 4th of July.

Q. In what year?

By Mr. Kusworm:

(H. R. 40)

* * * * *

The Witness: (Arlene Jackson)

A. She called me and told me that she wanted to get back to Dayton and she didn't have any money and so I had a friend of mine take the car and we went down to get her. We brought her back and she stayed with me.

By Mr. Myers:

Q. Where was that? A. On Rugby Road, 1936 Rugby Road.

Q. Now, how long did you live on Rugby Road? A. That was July the 4th and we moved from there in September.

Q. To where? A. We lived at 1500 West Riverview.

Q. Is that the apartment above Neil's? A. Right.

Q. How long did you live together there? A. We lived there until between New Year's—Christmas and New Year's, that would be 1958.

Q. All in all, how long did Mrs. Woodby live with you in the different . . . starting from July the 4th? A. Well, she lived with me from then up to '61, I imagine about February.

Q. That's a period of about two and a half years? A. That's right.

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